



## Transfer of Environmental Permits After the Sale or Transfer of DOE Property

**BACKGROUND:** The redevelopment of U.S. Department of Energy (DOE) facilities may involve the sale or transfer of Federal property. Changes in property ownership and/or operations may necessitate changes to the environmental permits held by these facilities.

For example, when DOE transferred operations of the Paducah and Portsmouth Gaseous Diffusion Plants to the Uranium Enrichment Corporation (UEC), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), and National Pollutant Discharge Elimination System (NPDES) permits were modified to add the UEC as site operators. In the future, some of these permits may be reissued solely to the UEC. This Information Brief provides an overview of the requirements applicable to the transfer of environmental permits associated with the sale or transfer of DOE property.

**STATUTES:** CAA, Title V; Clean Water Act (CWA), Sections 307, 318, 402, 404, and 405; RCRA, Section 3005; and Safe Drinking Water Act (SDWA), Part C.

**REGULATIONS:** 40 CFR 70, State Operating Permit Programs (CAA); 40 CFR 122, EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (CWA); 40 CFR 144, Underground Injection Control Program (RCRA, SDWA); 40 CFR 233, 404 State Program Regulations (CWA); 40 CFR 264, Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA); 40 CFR 265, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA); 40 CFR 270, EPA Administered Permit Programs: The Hazardous Waste Permit Program (RCRA); and 40 CFR 501, State Sludge Management Program Regulations (CWA).

**REFERENCES:**

1. RCRA and CERCLA Requirements Associated with the Sale or Transfer of DOE Property, U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief, EH-231-022/1193 (November 1993).
2. RCRA Corrective Action Permit Requirements and Modifications Under Proposed Subpart S Rule, U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief, EH-231-023/0793 (July 1993).
3. RCRA Corrective Action Permit Requirements and Modifications Under Subpart F Regulations, U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief, EH-231-022/0793 (July 1993).
4. RCRA Post-Closure Permits, U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief, EH-231-021/0593 (May 1993).
5. Loss of Interim Status (LOIS) Under RCRA, U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief, EH-231-0181/0992 (September 1992).

**If DOE sells or transfers property, what types of environmental permits may have to be modified, transferred, or terminated?**

The following types of environmental permits may have to be modified, transferred, or terminated if DOE sells or transfers property:

- ☐ Treatment, storage, and disposal facility (TSDF) permits for the management of hazardous wastes under the Resource Conservation and Recovery Act (RCRA);
- ☐ Permits for the management of air emissions from sources under the Clean Air Act (CAA);
- ☐ National Pollutant Discharge Elimination System (NPDES) permits for the management of discharges to surface water under the Clean Water Act (CWA);
- ☐ Section 404 permits for the management of dredge and fill materials under the CWA;
- ☐ Section 405 permits for the use and disposal of domestic sewage sludge under the CWA; and
- ☐ Underground injection control (UIC) permits for the management of discharges to groundwater under the Safe Drinking Water Act (SDWA).

**What regulatory requirements are associated with the transfer of a RCRA permit to a new facility owner or operator?**

RCRA permits are not transferrable until after the permitting agency is notified in accordance with 40 CFR 270.40. The permitting agency may require modification of the permit or revocation and reissuance of the permit [40 CFR 270.30(k)(3)].

Modification of a RCRA permit to transfer the permit to a new owner or operator or to add an operator is a Class 1 modification. It involves:

- ☐ getting prior written approval from the permitting agency in accordance with 40 CFR 270.42,
- ☐ submitting a revised permit application no later than 90 days prior to the scheduled change,
- ☐ submitting a written agreement containing a specific date for transfer of permit responsibilities between current and new permittee to the permitting agency, and
- ☐ continuing to comply with the requirements of 40 CFR 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated to the permitting agency that he or she is complying with that subpart [40 CFR 270.40(b)]. (As a Federal Government Agency, DOE is exempt from the financial requirements of 40 CFR 264, Subpart H.)

If the permitting agency decides to revoke and reissue the permit, the agency may incorporate any new requirements

“as may be necessary under RCRA” [40 CFR 270.30(k)(3)]. In such cases, the entire permit is reopened, subject to revision, and reissued for a new term [40 CFR 270.41].

**What regulatory requirements are associated with the transfer of RCRA interim status to a new facility owner or operator?**

Changes in the ownership or operational control of a RCRA interim status facility involves:

- ☐ submitting a revised Part A permit application no later than 90 days prior to the scheduled change, and
- ☐ continuing to comply with the requirements of 40 CFR 265, Subpart H (Financial Requirements) until the new owner or operator has demonstrated to the permitting agency that he or she is complying with that subpart [40 CFR 270.72(a)(4)].

**What RCRA-related liabilities should concern DOE when a RCRA permit or RCRA interim status is transferred?**

New owners or operators are required to demonstrate compliance with Subpart H financial requirements within 6 months after the change in ownership or operational control of the facility unless, like DOE, they are exempt from these requirements. When a RCRA permit or RCRA interim status is transferred to a non-exempt owner or operator, DOE could be held responsible for the costs of closure, post-closure care, and sudden and nonsudden accidental occurrences (third-party liability) until the new owner or operator can demonstrate to the permitting agency that he or she can comply with these requirements [40 CFR 264.143, 264.145, and 264.147 for permitted facilities and 265.143, 265.145, and 265.147 for interim status facilities].

Consequently, the bankruptcy of a new owner or operator before compliance with applicable financial assurance requirements is demonstrated would be of particular concern to DOE, even though DOE was no longer the owner or operator of the facility.

**What regulatory requirements are applicable to transferring a permit issued to DOE under the CAA?**

The transfer of ownership or operational control of an emissions source permitted under the CAA may be accomplished using administrative permit amendment procedures as long as:

- ☐ the permitting agency determines that no other change in the permit is necessary; and
- ☐ a written agreement containing a specific data for transfer of permit responsibility, coverage, and liability between the current and the new permittee has been submitted to the permitting agency [40 CFR 70.7(d)(1)(iv)].

Under administrative permit amendment procedures, the changes addressed in the request for an administrative permit amendment may be implemented as soon as the request is submitted [40 CFR 70.7(d)(3)(iii)]. The permitting agency is required to take no more than 60 days from receipt of a request for an amendment to take final action on the request and to submit a copy of the revised permit to the EPA Administrator [40 CFR 70.7(d)(3)(i) and (ii)]. Because States have considerable discretion in establishing air permit programs, affected DOE entities should examine state permitting regulations for possible additional regulatory requirements.

### **What regulatory requirements are applicable to transferring a permit issued to DOE under the CWA?**

DOE may transfer a NPDES permit issued under the CWA to a new owner or operator using an automatic transfer procedure as long as:

- ☐ DOE notifies the Director of the State permitting agency at least 30 days in advance of the proposed transfer date;
- ☐ the notice includes a written agreement between DOE and the new permittee containing a specific date for transfer of permit responsibility, coverage, and liability; and
- ☐ the Director of the State permitting agency does not notify DOE of his or her intent to modify or revoke and reissue the permit.

If DOE does not receive notice that the Director intends to modify or revoke and reissue the permit, the transfer becomes effective on the date specified in the written agreement between DOE and the new permittee [40 CFR 122.61(b)(1)-(3)].

A NPDES permit transfer may also be initiated by the Director of the State permitting agency as a minor permit modification with DOE's consent as long as:

- ☐ the Director determines that no other change in the permit is necessary; and
- ☐ a written agreement between DOE and the new permittee containing a specific date for transfer of permit responsibility, coverage, and liability has been submitted to the Director [40 CFR 122.63(d)].

Procedures for transferring dredge and fill materials permits issued under section 404 of the CWA are developed by the Director of the State permitting agency. The Director may use abbreviated procedures to modify a permit to allow for a change in ownership or operational control as long as:

- ☐ the Director determines that no other change in the permit is necessary; and
- ☐ a written agreement between the current and the new permittee containing a specific date for transfer of permit responsibility, coverage, and liability has been submitted to the Director [40 CFR 233.36(c)(2)].

The procedures for transferring a domestic sewage sludge permit issued under section 405 of the CWA are identical to the procedures for transferring NPDES permits, except that some State programs may not provide for minor permit modifications. In this case, the permitting agency may require submission of an updated permit application to transfer the permit to a new owner or operator [40 CFR 505.15(b)(12), 505.15(c)(1), 505.15(d)(2), 505.15(e)(3)].

### **What regulatory requirements are applicable to transferring underground injection control (UIC) permits issued to DOE under SDWA?**

The requirements for transferring UIC permits for underground injection wells are identical to the requirements for the transfer of NPDES permits described above, except that the required notice to the permitting agency must demonstrate the new permittee's financial responsibility and resources to close, plug, and abandon the underground injection operation in the manner prescribed by the permitting agency [40 CFR 144.38, 144.39(b)(2), 144.41(d), and 144.52(a)(7)]. Hazardous waste underground injection wells in States that do not have approved UIC programs are required to have RCRA permits. Therefore, regulatory requirements associated with the transfer of an interim UIC permit for a hazardous waste injection well in these States are the same as the requirements applicable to the transfer of a RCRA permit [40 CFR 270.1(c)(1), 270.64].

**Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Beverly Whitehead, RCRA/CERCLA Division, EH-413, (202)586-6073.**

